

Outline of Remarks

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Hearing on Boards & Commissions

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I. Introduction

Although requested specifically to address how to make boards and commissions more effective, I will also briefly discuss the broader issues of boards and commissions in California state government.

II. Typology

A useful, if unorthodox, way of assessing boards and commissions is through a typology based on origins; i.e., the circumstances and pressures that lead to a board or commission's establishment. Such a typology would include three basic, distinct but not mutually exclusive, types:

Boards and Commissions originating in private sector demands

Boards and commissions have been created to provide businesses, professions and industries access to governmental authority for the purpose of creating and maintaining market-place protections and/or privileges. Consumer and other public interest benefits may result, but primary focus is economic advantage.

Boards and Commissions originating in the nature of public goods

Boards and commissions have been created to deal with public goods (i.e., a good that is consumed collectively and the benefits cannot be limited to certain individuals) and the inherent problems of public goods (e.g., free-riders and the tragedy of the commons).

Boards and Commissions originating in the nature of democratic governance

Boards and commissions have been created to achieve a public interest but placed outside the traditional governmental structures and procedures in recognition that in certain circumstances traditional structures and procedures may be inefficient

or ineffective. These circumstances include conflict of interests, collegiality, over-responsiveness to public demands, and the potential for the reality or perception of corruption.

III. Context

The Progressive Myth

The Progressive myth that politics can be eliminated from governance has proven powerful, pervasive and persistent but remains based on a somewhat mythical assumption that there is not a Democratic or Republican way to build a bridge, only the right way. Load-bearing ratios may have only one correct answer but there is no parallel simplicity in deciding where to build the bridge, how to fund it, what priority should it have regarding other bridge projects and other uses of public funds, etc.

Contemporary Problems

The Progressive myth has, in part, made possible entities such as the First Five Commission and the new California Institute for Regenerative Medicine which are, in effect, autonomous fiefdoms outside the normal checks and balances of a republican government.

IV. Improvements

Macro Improvements

Boards and Commissions originating in private sector demands should be subject to review based on whether (a) authority should be with board of representatives of regulated business or profession or with a state agency charged with enforcement regulations necessary to protect the public's interest (i.e., health, safety, consumer rights, etc.) helped, but not directed by, an advisory board of representatives of the regulated and (b) economic considerations which would actually impact the broad economic health of the state rather than an individual business or profession.

Boards and commissions, regardless of their origin, should be independent of the regular mechanics and structures of state government only when truly justified and not simply because of a vague and fundamentally anti-democratic notion that elected officials cannot be trusted.

It should be recognized that, in a republic, public accountability demands that all government entities be subject to appropriate checks and balances, whether from the regular mechanics and structures of state government, the elected representatives of the people or from the people directly. Public accountability is

enhanced, not diminished, by (a) the ability of the legislature and governor to exercise budgetary review and some control; (b) subjecting board and commission members to the same ethics and conflict of interests standards are elected and other public officials; (c) an appointment process that gives elected officials the ability to appoint, with minimum restrictions, a majority of the board of commission; and (d) appointments should be made for a set term and not at the pleasure of the appointing power (accountability is important but it is also important to recognize that “at pleasure” appointments undermine the justification for an independent body).

Appointments made by a combination of executive and legislative authorities are not inherently antithetical to accountability and may well enhance responsiveness to the public interest as opposed to the interests of a particular appointing power.

Micro & Miscellaneous Improvements

Compensation should be determined by work load and be equivalent to similar ranking officials in civil service.

Compensation for full-time boards and commissions could be set by the California Citizens' Compensation Commission, which sets the salaries of constitutional officers and legislators.

Periodic surveys of the public's satisfaction with government have limited utility, can be misleading and ignore George Will's admonition that government is not a business.